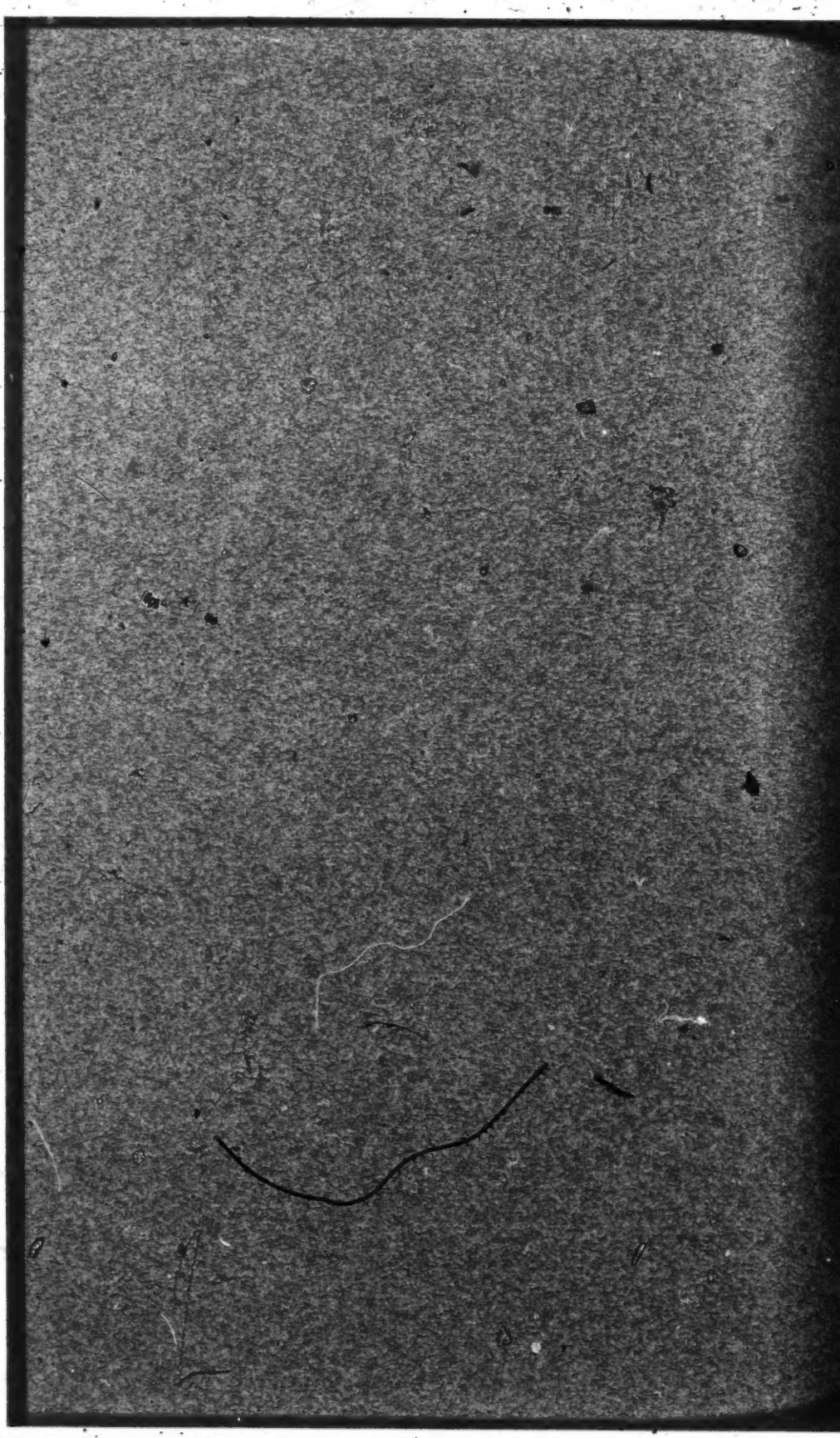

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No. 78

In the Supreme Court of the United States

OCTOBER TERM, 1930

MARSHALL L. MOTT, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES ON PETITIONER'S MOTION TO ADVANCE

In the Supreme Court of the United States

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The United States does not oppose the motion to advance this cause.

However, it is believed attention should be called to an erroneous assumption in the motion, namely, that the case of the *United States* v. *Equitable Trust Company et al.*, No. 21 on the docket of the present term of this Court, involves the same question as the instant case of *Mott* v. *The United States*, No. 78. The former case involves only the question of the power of the court below to order allowances of attorneys' fees to be paid out of Jackson Barnett's restricted Indian funds. It is true that originally there was involved in that case the same fundamental question as is involved in the *Mott*

case, as to the authority of the Secretary of the Interior to approve and validate the gifts purported to have been made by Jackson Barnett. But in *Barnett* v. *Equitable Trust Company, et al.*, 21 F. (2d) 325, in which the United States intervened, it was finally determined that the Secretary had no such authority. Appeal was dismissed in the Circuit Court of Appeals, 26 F. (2d) 350, and certiorari denied, 278 U. S. 626. The question regarding the power of the court to make an allowance of counsel fees out of restricted Indian funds involved in *United States* v. *Equitable Trust Company, et al.*, No. 21 on the docket, arose after the final determination of the case on the merits by the court below, and is now the only question in that case to be decided by this Court.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
SETH W. RICHARDSON,
Assistant Attorney General.
GEORGE C. BUTTE,
Special Assistant to the Attorney General.

OCTOBER, 1930.

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